
OLR Bill Analysis

sSB 1154

AN ACT CONCERNING THE ACCIDENTAL FAILURE OF SUIT STATUTE.

SUMMARY:

By law, before filing a medical malpractice lawsuit, an attorney or claimant must obtain a written, signed opinion from a similar health care provider that there appears to be evidence of medical negligence. (The letter is often referred to as a certificate of merit.)

This bill allows someone whose malpractice case was dismissed for failure to meet this requirement to file a subsequent case once under the accidental failure-of-suit statute, even if the dismissal was for a reason not currently covered by that statute. The accidental failure-of-suit statute allows plaintiffs to file a lawsuit within one year after a timely filed action was dismissed for certain reasons, including dismissals for “any matter of form,” even though the statute of limitations has since expired (see BACKGROUND).

The bill specifies that it allows only one such automatic use of the accidental failure-of-suit statute. Presumably, the bill would allow a subsequent case to be brought if a case brought under the bill is dismissed and the subsequent case would otherwise be authorized by the statute.

The bill also makes technical changes.

In 2011, the state Supreme Court ruled that a malpractice case dismissed for failure to comply with the certificate of merit requirement could not be revived under the “matter of form” provision of the accidental failure-of-suit statute if the failure was due to egregious conduct or gross negligence (see BACKGROUND).

EFFECTIVE DATE: Upon passage and applicable to actions pending

on or filed on or after that date.

BACKGROUND

Accidental Failure-of-Suit Statute

The accidental failure-of-suit statute generally authorizes a lawsuit to be filed within one year after an action was dismissed by the court for certain reasons, although the statute of limitations has expired since the dismissal. The statute applies to cases dismissed due to lack of jurisdiction, problems with service, the death of a party, or a matter of form. The time period is reduced to six months if the dismissed case was against an executor or administrator of a defendant who had died.

Related Case

In 2011, the Connecticut Supreme Court heard a case involving the intersection of the certificate of merit requirement and the accidental failure-of-suit statute. The plaintiff argued that the prior dismissal was due to lack of jurisdiction and a matter of form and thus the case should be subject to the statute.

The court held that a dismissal for failure to meet this requirement does not affect the court's subject matter jurisdiction over the claim. The court also held that in this situation, the plaintiff may commence an otherwise time-barred new action under the "matter of form" provision only if the failure was due to the plaintiff's or attorney's mistake, inadvertence, or excusable neglect, rather than egregious conduct or gross negligence (*Plante v. Charlotte Hungerford Hosp.*, 300 Conn. 33 (2011)).

The court agreed with the lower court's determination that, as the prior case involved psychiatric care and the defendants were a psychiatrist and a social worker, it was "blatant and egregious conduct" to attach an opinion letter from a registered nurse with limited psychiatric care experience, as she was clearly not a similar health care provider under the malpractice law.

Related Bill

HB 6687, reported favorably by the Judiciary Committee, makes

changes concerning the certificate of merit requirement, including (1) expanding the types of health care providers qualified to submit an opinion letter and (2) giving claimants 60 days to cure a failure to obtain and file the letter, after being ordered to do so, before dismissal of the case.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 17 (04/12/2013)